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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554  
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MAIL SECTION  
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In the Matter of

Amendment of Part 74-E Rules,  
Aural Broadcast Auxiliary  
Stations.

### NOTICE OF PROPOSED RULE MAKING

Adopted: June 1, 1993;

Released: June 16, 1993

Comment Date: August 9, 1993

Reply Date: August 24, 1993

By the Commission:

### INTRODUCTION

1. By this *Notice of Proposed Rule Making*, we propose to amend Section 74.550 of our rules to permit certain unapproved transmitters in the band 944-952 MHz,<sup>1</sup> to be used for backup purposes at Aural Broadcast Auxiliary Stations operating in accordance with Part 74 Subpart E.

### BACKGROUND

2. In 1985, the Commission adopted a *Report and Order* in MM Docket No. 85-36 which required all new transmitters for aural studio transmitter-link/intercity relay (STL/ICR) operation in the 944-952 MHz frequency band to be approved prior to marketing. The order also grandfathered transmitters manufactured before 1985 "to allow their use for a five year period ending on July 1, 1990. At the end of 1989 the Society of Broadcast Engineers (SBE) and National Public Radio (NPR) requested that the Commission extend the 1990 deadline until July 1, 1993. Both parties argued that unforeseen developments in the broadcast marketplace had led to less congestion than was originally anticipated, so that the requested relief would not cause undue harm. On January 12, 1990, the Chief, Mass Media Bureau granted the requested deadline extension in an *Order*, 5 FCC Rcd 738. That *Order* emphasized that all existing STL/ICR transmitters in use after July 1, 1993 must be approved under the Commission's equipment approval process. In view of the considerable

time that has been allowed for compliance with this requirement, we do not believe any further extension of the July 1, 1993 deadline for primary equipment is necessary.

### DISCUSSION

3. After July 1, 1993, all Part 74, Subpart E Aural Broadcast Auxiliary Service Station<sup>2</sup> transmitters operating in the 944-952 MHz band that have not been approved under the Commission's equipment authorization procedures may no longer be used for regular day-to-day service. However, it is our understanding that many broadcast station licensees install backup auxiliary service station equipment to avoid undue disruption in programming should the regular auxiliary transmitter fail or require servicing. Strict compliance with Section 74.550 would require that all aural service station transmitters not in use, and which have not been approved under the Commission's equipment authorization program, be entirely removed from service by July 1, 1993. This would also require licensees to bear the cost of replacing their infrequently used backup equipment with approved transmitters.

4. Various parties have suggested informally that the Commission should permit the use of unapproved aural transmitters for backup purposes. This would avoid burdening licensees with unnecessary expenditures, would permit the installation of backup facilities in situations which have not previously been reasonable, and would conserve both public and private resources which would otherwise have to be spent on requests for waivers to use unapproved equipment for backup purposes.

5. In light of the above, we propose to allow all transmitters removed from such primary service to be retained for backup purposes, provided that such transmitters will not be used for more than 720 cumulative hours per year without explicit Commission authority. This use of non-approved equipment will also be restricted to those situations where no interference will be caused to existing aural broadcast service stations and where there will be no impediment to the establishment of new aural broadcast service stations. By "backup purposes" we mean temporary use necessary to restore and maintain regular service because the primary transmitter unit has failed or requires servicing. The 720 hour figure equals 30 full days and mirrors the time permitted under Section 74.24 for short-term operations. We believe that this period of time is ample enough to allow for backup use, yet short enough not to undermine the intent of the rule or to encourage abuses. Any licensee wanting to use unapproved equipment for a period greater than 720 hours would have to receive explicit Commission approval in advance.

6. In view of the short time remaining before the July 1, 1993, deadline, we will suspend enforcement of Section 74.550 to the extent that it requires the use of approved transmitters for backup purposes. In this way, licensees will be relieved of the burden of spending scarce funds on the replacement of infrequently used backup equipment. It will

<sup>1</sup> The scope of this upgrade requirement also includes grandfathered stations operating on the previously authorized frequency band 942-944 MHz. In this regard, the 942-944 MHz frequency band remains available for use by aural STL/ICR stations operating in Puerto Rico. See § 74.502(a). These users are also required to bring their equipment into compliance by

July 1, 1993. We propose to allow use of non-complying equipment for backup purposes by these stations as well.

<sup>2</sup> An aural broadcast auxiliary station is a fixed station used to transmit aural program material between the studio and the transmitter of a broadcasting station, between various types of broadcasting facilities, or between relay points. See § 74.531.

also allow licensees to retain unapproved equipment for backup purposes until final action is taken in this proceeding, and thereafter if the proposed rule is adopted.

#### PROCEDURAL MATTERS

7. *Ex Parte Rules - Non - Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. Ex parte, presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 C.F.R. Sections 1.1202, 1.1203 and 1.1206(a).

8. *Regulatory Flexibility.* We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendments are promulgated, there will not be a significant negative economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. Pub. L. No. 96-354.94 Stat.1164.5 U.S.C. Section 601 et seq (1981).

9. *Comment Dates.* Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before **August 9, 1993** and reply comments on or before **August 24, 1993**. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Washington, D.C. 20554.

10. *Paperwork Reduction Act* - The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new modified information collection requirement on the public.

11. IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, that effective upon publication of this *Notice of Proposed Rule Making* in the Federal Register, enforcement of Section 74.550 of the Commission's rules is suspended, in part, to the extent that it prohibits the use of unauthorized equipment operating in the band 944-952 MHz for backup purposes; provided, however, that such use may cause interference to, or impede the establishment of other aural broadcast auxiliary links, and is not used for more than 720 cumulative hours per year.

FEDERAL COMMUNICATIONS COMMISSION

*Donna R. Searcy* 6/17/93

Donna R. Searcy  
Secretary

#### APPENDIX

It is proposed to amend Title 47 of the Code of Federal Regulations as follows:

#### PART 74 -- EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. The authority citation for Part 74 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended; 47 U.S.C. 301, 303, 307.

2. It is proposed to revise Section 74.550 to read as follows:

#### §74.550 Equipment authorization

Each authorization for aural broadcast STL, ICR, and booster stations shall require the use of notified or type accepted equipment, except that operation of 944-952 MHz equipment, which has not been type approved under the equipment authorization program may continue until July 1, 1993, after which equipment must be approved. Equipment which has not been type approved under the equipment authorization program and which was in service prior to July 1, 1993, may be used after July 1, 1993, solely for temporary uses necessary to restore or maintain regular service provided by approved equipment, because the main or primary unit has failed or requires servicing. Such temporary uses may not interfere with or impede the establishment of other aural broadcast auxiliary links, and may not occur during more than 720 cumulative hours per year. Requirements for obtaining a grant of equipment authorization are contained in subpart J of part 2 of the Rules. Equipment designed exclusively for fixed operation shall be authorized under notification procedure (see § 2.904(d) of this chapter).

Note: Consistent with the note to § 74.502(a), grandfathered equipment in the 942-944 MHz band and STL/ICR users of these frequencies in Puerto Rico are also required to come into compliance by July 1, 1993. The backup provisions described above apply to these stations also.